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Copyright Laws in the Music Industry

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Writing Process

This assignment was to write an argumentative research paper on a topic related to the course theme, which was Remix Culture. After browsing through a list of suggested topics and reading about a number of famous copyright cases, I finally chose my topic. My biggest struggle during the composition of this paper was figuring out how to organize all of my thoughts and weave them into the research that I gathered. Having both a peer review day in class and a conference with my professor was very helpful and gave me a fresh perspective on my work, making it much easier to revise my draft.

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Copyright Laws in the Music Industry

In the words of entertainment law practitioner Robert Meitus, when it comes to ownership in the music industry, “The line is inherently blurred.” Amidst today’s digital culture, trying to distinguish who owns what in the music industry eventually becomes such a convoluted task that it is nearly impossible. With the amount of songs circulating the internet, there is no way to create an entirely new and original song without using some element from the work of another artist. This has led to problems in the music world. Currently, it is illegal in the United States for musicians to use any identifiable aspect of another song that has been copyrighted, so many artists have been sued and court cases have erupted. The laws regarding music ownership are not benefitting the music industry and should be changed so artists can feel free to express themselves and to be inspired by others.

Currently, copyright laws are too constricting for contemporary music artists, because the whole world can be viewed as a remix of sorts, with everything produced from combinations of different elements (Ferguson). For example, humans are created from a combination of their parents’ genes. The United States is known as a “melting pot” because so many cultures and people from around the world have blended to generate what is today known as American culture. The same goes for music, as it is a mixture of melody, rhythms, pitch, and other components. With the copyright laws prohibiting artists from using elements of other musical

compositions, artists may not be able to make music without it being illegal in some way. Living in a culture filled with remixes makes it nearly impossible for artists to produce an entirely new song that is not somehow similar to the work of other artists. The law prohibits artists from being inspired by others, so many tend to find themselves in a difficult situation because, in the eyes of the filmmaker and creator of the video series “Everything is a Remix,” Kirby Ferguson, “Creation requires influence.” All ideas have to come from something. Therefore, music artists look to the world around them for inspiration for their musical compositions, often spurred to produce a song by some event in their own lives or by a global event. The slightest element of a song that sounds familiar to a previous piece can potentially be considered plagiarism, and the fear of infringing on copyrights affects the way artists make songs and halts innovation in the music industry.

As a result of some recent court cases in which artists accused of plagiarizing had to pay large sums of money, most artists will not step out of their comfort zone to try something different for fear that they will be sued and fined. Artists will not risk producing a song if it means they could potentially face a legal battle like Robin Thicke and Pharrell Williams did. Thicke and Williams were sued by the Gaye family for copying Marvin Gaye’s 1977 hit “Got to Give it Up” in their 2013 hit “Blurred Lines.” Thicke and Williams ended up losing the case and had to award 7.36 million dollars in damages to the Gaye family (Bialek 14). Artists do not want to go through all the trouble, time, and money that is associated with intellectual property cases, so they will end up playing it safe and not trying new things (Keyt 424). In response to the verdict in the “Blurred Lines” case, intellectual property lawyer Adam R. Bialek says, “The result may cause others to question whether they risk exposure in posting something online, and the public’s creative explosion following on the heels of online expansion may come to a

screeching halt” (15). With the amount of song material available on the internet, people have been able to easily alter songs and change them with technology, but Bialek is suggesting that the recent cases involving music ownership will slow this trend. In agreement with this idea are Aram Sinnreich, an analyst of the media and entertainment industries with a focus on music, and Marissa Gluck, a marketing consultant for the media, technology, and entertainment industries. These two state that “At some point, the aggressive controls the music industry seeks over the behaviors of both musicians and listeners will stifle aesthetic innovation (or force it entirely underground), and alienate its own consumer base” (Sinnreich and Gluck 40).

Even though copyright laws were originally meant to promote innovation by encouraging artists to create new things, the laws seem to be limiting artists’ freedom of expression (Bialek 14). However, there are people such as Johanna Blakley, the deputy director of the media-focused Norman Lear Center at the University of Southern California, who believe that a lack of copyrights can actually lead to more innovation, as it does in the fashion industry. In her TED Talk speech, Blakley shows a chart of the large gross sales of the fashion industry in contrast to the miniscule sales of industries such as music. She suggests that fashion’s copyright-free culture could be a model for industries like music, because artists can then be freely inspired by the work of others and use those inspirations to come up with something that expresses who they are, leading to individual styles and overall innovation (Blakley). In agreement with this idea, Sinnreich and Gluck mention that the music industry could take its cue from fashion (40). They believe there is a good chance that new music that captivates listeners could arise from the blending of old music without the protective copyrights that keep songs under lock and key (Sinnreich and Gluck 40).

In contrast to fashion, innovation in music is halted by copyright laws because there is too much subjectivity involved with music for it to be defined by a set of laws (Leventhal). Eric M. Leventhal, a technology and intellectual property attorney, thinks that music's "objectification is complicated by the unique interaction between music and the human brain" (1574-1575). As an expressive art form, music will naturally bring out emotions in the listener. Therefore, music cannot be analyzed in a strictly objective setting (Sinnreich and Gluck 8-9). Determining if an artist copied another work is fairly objective, but deciding if the similar element is significant enough to be considered illegal is much more subjective. There have been debates over who gets to decide if a song has infringed on the copyright in a court case, either music experts or laypeople, and few conclusions have been reached. Some experts have suggested a scientific or mathematical approach to deciding whether a song has been illegally used or not, but those approaches are only effective in determining if two songs that sound unusual compared to other works are substantially similar to each other (Cason and Müllensiefen 32-35). While the method might work for determining what is similar, it still does not answer the question of how much similarity constitutes a copyright infringement or whether the "feel" or style of a song can be copied; these two things are subjective topics. For instance, even if a song has admittedly been influenced by a different artist, it still has the unique touch of the new artist, who took part of it and transformed it into an entirely new piece. Deciding if that new creation has infringed upon the old one in such a way that it merits legal action is where the problem lies.

Current copyright laws do not accommodate for the fact that music "is a fundamentally communicative and therefore social act" (Sinnreich and Gluck 12). Artists interact with each other through the universal language of music. Similar to telling a story, music gets passed along from person to person, through generations, and it is modified to fit the

times and culture. Individuals take a piece of music that sparks a feeling, and they elaborate on that feeling by adding new elements and mixing them with other inspirational pieces to eventually create their own versions that fit their personal style. As Aaron Keyt, an intellectual property lawyer, puts it, “Composers necessarily listen to other people's music. Composition does not occur in a vacuum” (427). There are certain parts of a song that have to be there, because like all arts, music is part of a culture that has specific styles and well-developed techniques that tend to fit into certain genres (Keyt 427). Also, there are popular trends that musicians try to follow to stay with the times and to appeal to listeners. Musicians want their songs to be understood and enjoyed by listeners, so their work must be slightly similar to previous works in order to create an aspect of familiarity for the listeners (Keyt 428). Hearing a familiar sound might bring back a good memory or make a person think of a certain event in his or her life, which enables the person to connect to the song.

A significant argument for proponents of the copyright law is that artists do not want their music used in a different song and then sold for profit, possibly decreasing their wealth. It is also very difficult to prove that infringement of musical compositions has harmed the copyright holder financially, because “so many variables affect profits that a drop in sales could not be reliably attributed to the defendant’s use of borrowed material alone” (Keyt 445). Blaming a decrease in profits on a single element used from a different artist’s song is not going to get an artist very far because it will not be supported by concrete evidence. A piece of music is challenging to evaluate in monetary units because it is a work of art and requires other components besides the sound and style to make it part of a business.

Even though copyright laws for music were formed with good intentions, meant to encourage innovation, they have done the opposite in the modern digital age. The law does not

take into account the culture of music and how it changes with the times. Music is a subjective art form, so quantifying it in terms of how much profit it generates or how much of it has been infringed is not a reasonable undertaking. Part of the culture of music is weaving together different inspired elements to elicit a mood and to create a distinctive style for an artist.

Remixing has always been part of the music world, but technology has made it more prevalent and popular. Music copyright laws need to acknowledge the fact that times are changing with technology, and therefore should not prohibit artists from drawing inspiration from their peers or remixing music to create a new sound. Innovation will thrive if the music industry loosens the reigns on its copyright laws and allows artists to freely express themselves.

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